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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

CITY OF LOS ANGELES et al., Petitioners, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; CITY OF SOUTH GATE et al., Real Parties in Interest.	B100019 (Super. Ct. No. BC129447; Aurelio Munoz, Judge)

ORIGINAL PROCEEDING; petition for writ of mandate. Petition granted.

Keesal, Young & Logan, Samuel A. Keesal, Jr., Joseph S. Schuchert, Dawn M. Schock and Elizabeth P. Beazley for Petitioners.

No appearance for Respondent.

David B. Brearley and Eduardo Olivo for Real Parties in Interest.

DeWitt W. Clinton, County Counsel (Los Angeles), and Thomas J. Faughnan, as Amicus Curiae on behalf of Real Parties in Interest.

I. INTRODUCTION

Petitioners[1] seek a writ of mandate directing the superior court to set aside its orders overruling petitioners' demurrers to real parties[2] first amended complaint.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Standard of Review

A demurrer challenges the legal sufficiency of the complaint. We therefore accept as true the complaint's well-pleaded material facts, but not its contentions, deductions or conclusions of law. (*Blank* v. *Kirwan* (1985) 39 Cal.3d 311, 318.) We consider neither the truth nor accuracy of the material factual allegations. (*Committee on Children's Television, Inc.* v. *General Foods Corp.* (1983) 35 Cal.3d 197, 213.) Those are matters to be resolved after the case has been moved beyond pleading litigation. With those principles in mind, we recite the pertinent facts.

B. The Complaint

The Alameda corridor project (Project) will consolidate the three rail lines which service the ports of Long Beach and Los Angeles, and provide a single high speed, high capacity railway corridor.[3]

In August 1989, in order to facilitate development of the Project, the Cities of Los Angeles and Long Beach established a joint powers authority currently known as

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[1] Petitioners are the City of Los Angeles, the Port of Los Angeles, the Board of Harbor Commissioners of the City of Los Angeles, the City of Long Beach, the Port of Long Beach and the Board of Harbor Commissioners of the City of Long Beach.

[2] Real parties in interest are the City of South Gate, the City of Vernon, the City of Compton, the City of Lynwood (complaining cities), the Association For The Mitigation of Transportation Impacts of Ports Expansion, Anita O. Aviles, and Edward Saenz.

[3] According to the County of Los Angeles, the rail link between the ports and the central Los Angeles rail yards is estimated to cost about $1.8 billion.

the Alameda Corridor Transportation Authority (ACTA) pursuant to Government Code section 6500 et seq. (the Joint Powers Act; hereafter the Act).[4] Los Angeles and Long Beach are the only parties to the Joint Powers Agreement (JPA).

The JPA established a 14-member governing board (Board) for ACTA which included representatives of cities which are not parties to the JPA, including the complaining cities. The Board also included representatives of the Cities of Huntington Park and Carson, the County of Los Angeles, and the Los Angeles County Transportation Commission.[5]

The JPA also created a finance committee consisting of three members, a representative from the Board of Harbor Commissioners of the City of Long Beach, the Board of Harbor Commissioners of the City of Los Angeles and the Los Angeles County Transportation Commission. These three entities are the only local entities contributing funds to the Project. The JPA specified that certain of the funds are generated by the "ports," and that other funds are generated in other ways.

The original JPA authorized the finance committee to review and approve all matters involving the expenditure of all port funds, including funds from the proceeds of bond issues or other forms of indebtedness incurred or guaranteed by the Port of Long Beach and/or the Port of Los Angeles. Final approval of any actions taken by the finance committee, however, lay with the Board.

In January 1994, the Cities of Long Beach and Los Angeles amended the JPA in a way which curtailed the ability of the complaining cities to participate in the financial decisions of ACTA. The finance committee was enlarged to seven members, with the

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[4] All further statutory references are to the Government Code unless otherwise indicated.

[5] The JPA was amended in 1990 and 1991 to specify that ACTA would be administered by a governing board of 15 members. The change added the District Director of District 07 of the California Department of Transportation as a member.

Cities of Los Angeles and Long Beach retaining majority status on the committee, having two members each. The County of Los Angeles has one seat, the California Department of Transportation has one seat, and the complaining cities and the other non-contributing cities together, have one seat.

Under the amendment, the finance committee reviews and approves all matters involving the expenditure of port funds on behalf of the Board. The finance committee does not require the approval by the Board for the expenditure of port funds under the amendment. The Board retains its power of distribution over all other funds.[6]

On June 9, 1995, real parties in interest filed a two-count declaratory relief complaint pursuant to Code of Civil Procedure section 1060 (hereafter §1060)[7] against petitioners.[8] Real parties seek a declaration that the amendment of the JPA violates the

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[6] Contained within the record is the information that on July 13, 1995, ACTA's governing board voted to rescind the amendment, and that the Cities of Long Beach and Los Angeles refused to agree to its rescission.

[7] Section 1060 provides that "[a]ny person interested under a written instrument . . . or under a contract, or who desires a declaration of his or her rights or duties with respect to another . . . may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court . . . for a declaration of his or her rights and duties . . . including a determination of any question of construction or validity arising under the instrument or contract." Declaratory relief actions against municipal corporations such as the Cities of Long Beach and Los Angeles are appropriate (*Hoyt* v. *Board of Civil Service Commrs.* (1942) 21 Cal.2d 399, 400-401), and, although section 1060 provides that such actions may only be brought by a "person," corporations and other entities are embraced by that term. (*Oil Workers Intl. Union* v. *Superior Court* (1951) 103 Cal.App.2d 512, 570.)

[8] In January 1995, the complaining cities filed a petition for writ of mandate containing allegations nearly identical to those set forth in real parties' declaratory relief action. The matter was assigned to Judge Diane Wayne who denied the complaining cities' request for a preliminary injunction. Before Judge Wayne could rule on the peremptory writ, the complaining cities dismissed their mandamus petition. After real parties filed their declaratory relief action, the Cities of Long Beach and Los Angeles

Act by "failing to impose the same procedural restrictions upon the manner in which ACTA may exercise its powers as are applicable to the City of Los Angeles in the exercise of similar powers, either by its Charter or other general laws," and that the amendment, "or the portion providing for the increased power" of the finance committee is therefore null and void. Real parties also allege that various contracts approved by the ACTA finance committee on February 2, 1995, with various corporate entities, without the approval of the Board are not binding on ACTA and its Board, and are null and void. Real parties seek a declaration of the rights and duties of the parties to these contracts.

C. The Demurrers

The Cities of Los Angeles and Long Beach each demurred to the original complaint. The superior court sustained the demurrers with leave to amend, ruling that ACTA was an indispensable party.[9] On November 3, 1995, the first amended complaint was filed, adding ACTA as a party. Shortly thereafter, the City of Long Beach demurred to the first amended complaint contending that it failed to state facts sufficient to constitute any cause of action because of its failure to allege any justiciable controversy. The City of Long Beach also asserted that the complaining cities and taxpayers lacked standing to maintain their section 1060 declaratory relief action. Later, the City of Los Angeles demurred principally on the same grounds as the City of Long Beach.

The Cities of Long Beach and Los Angeles argued that the complaining cities do not, merely by virtue of their status as members of the Board, acquire contractual rights in the manner of administering the JPA; consequently, the Cities of Long Beach and

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moved to have the suit assigned to Judge Wayne as a related case. The request for assignment to Judge Wayne was denied.

[9] We express no view as to the validity of this ruling since the issue is not before us.

Los Angeles could freely amend the JPA pursuant to the Act. Moreover, because the reconstituted finance committee includes representatives of the Board of Harbor Commissioners of the City of Long Beach, the Board of Harbor Commissioners of the City of Los Angeles, the City of Los Angeles council person representing the harbor district and a City of Long Beach council person appointed by the mayor of the City of Long Beach, the exercise of municipal powers through the finance committee was not an improper delegation of those powers.

D. The Trial Court's Ruling

The superior court overruled the demurrers. In so doing, it ruled that both the complaining cities and the taxpayers have standing to sue, and that the amendment to the JPA was an improper delegation of powers, and is, therefore, null and void.[10] This joint petition for writ of mandate followed.

E. Writ Review

Extraordinary review of an order overruling a demurrer is appropriate where, as here, the issues presented are of great public importance (*Southern Cal. Edison Co.* v. *Superior Court* (1995) 37 Cal.App.4th 839, 845; *City of Glendale* v. *Superior Court* (1993) 18 Cal.App.4th 1768, 1776), involve novel issues of law (*Id.* at p. 1777; *Associated Brewers Distr. Co.* v. *Superior Court* (1967) 65 Cal.2d 583, 585), and

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[10] The minute order issued in connection with the demurrer filed by the City of Los Angeles states: "The demurrer is overruled. What the city does not and refuses to recognize is that it and the City of Long Beach cannot delegate to a committee, that they selected, power to govern ACTA independent of the board of directors. The City of Los Angeles can't do it in running its own city. Likewise, Section 6509, Government Code, prohibits the city from trying to run ACTA to the exclusion of all of the other cities that are on the board. The argument that the taxpayers can't bring actions because they are not citizens of either Long Beach or Los Angeles is specious. Under the arguments presented each could then demurrer [*sic*] to the citizens of the other's city and no taxpayer could ever bring an action. Here the citizens are vitally affected since it is their respective cities that are going to be torn up and disrupted during construction of the corridor. See Section 526a of the Code of Civil Procedure."

concern issues which should be resolved at the outset of a lawsuit, i.e., standing. (*Taylor* v. *Superior Court* (1990) 218 Cal.App.3d 1185, 1190.)

III. DISCUSSION

A. Contentions

Petitioners contend the superior court abused its discretion in overruling their demurrers to the first amended complaint because, contrary to the superior court's ruling, neither the complaining cities nor the taxpayers have standing to bring this lawsuit, and even if we assume the taxpayers have standing to sue, they have failed to state a cause of action pursuant to Code of Civil Procedure section 526a (hereafter § 526a). Petitioners also contend that they acted properly in amending the JPA, and that they have done so in accordance with the Act.

B. The Act

The JPA was drafted under the Act which was originally enacted in 1921. (§ 6500.) As amended, it allows "two or more public agencies by agreement" to "jointly exercise any power common to the contracting parties." (§6502.) The contract "shall state the purpose of the agreement or the power to be exercised," and "shall provide for the method by which the purpose will be accomplished or the manner in which the power will be exercised." (§6503.)

The JPA may, as was done here, provide for the creationof an agency which is "separate from the parties to the agreement and is responsible for the administration of the agreement." (§ 6503.5.) The agency "provided by the agreement to administer or execute the agreement may be . . . a commission or board constituted pursuant to the agreement or a person, firm or corporation, including a nonprofit corporation, designated in the agreement." (§6506.) Once created, "The agency is a public entity separate from the parties to the agreement." (§6507.) "The agency shall possess the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement. If the agency is not one or more of the parties to the agreement but is a public entity, commission or board constituted

pursuant to the agreement and such agency is authorized, in its own name, to do any or all of the following: to make and enter contracts, or to employ agents and employees, or to acquire, construct, manage, maintain or operate any building, works or improvements, or to acquire, hold or dispose of property or to incur debts, liabilities or obligations, said agency shall have the power to sue and be sued in its own name." (§ 6508.) The power given to the agency "is subject to the restrictions upon the manner of exercising the power of one of the contracting parties, which party shall be designated by the agreement." (§ 6509.)

The Act "mean[s] that cities may contract in effect to delegate to one of their number [or a separate agency created by the agreement] the exercise of a power or the performance of an act in behalf of all of them, and which each independently could have exercised or performed." (*The City of Oakland* v. *Williams* (1940) 15 Cal.2d 542, 549.) The Act cannot be "said to enlarge upon the charter provisions of said municipalities. It grants no new powers but merely sets up a new procedure for the exercise of existing powers." (*Ibid*.)

The Cities of Long Beach and Los Angeles, the parties to the agreement at issue here, possess the necessary power under their respective charters to construct the transportation corridor contemplated by the JPA. The Act "merely provides a procedure whereby this power may be exercised by cooperative action." (*The City of Oakland* v. *Williams*, *supra*, 15 Cal.2d at p. 549.)

C. Amendment of the JPA

In January 1994, the Cities of Long Beach and Los Angeles amended the JPA which, in effect, reorganized the ACTA finance committee. Real parties concede, as they must, that the Cities of Long Beach and Los Angeles are the only parties authorized to amend the JPA. Real parties contend, however, that the amendment to the JPA is an improper delegation of power, and is, therefore, null and void. Before deciding this issue, we are required to determine whether the complaining cities and/or

the complaining taxpayers have standing to maintain a declaratory relief action in order to challenge the validity of the amendment.

D. Third Party Beneficiaries

The complaining cities seek declaratory relief pursuant to section 1060 which requires a plaintiff to state facts supporting an actual justiciable controversy between the parties. This controversy must, however, be based upon contractual rights and duties which actually exist between the plaintiffs and defendants. The complaining cities contend their requisite right is derived from their status as third party beneficiaries to the JPA.[11]

Civil Code section 1559 provides: "A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it." A third party may qualify as a beneficiary under a contract where the contracting parties must have intended to benefit that third party and such intent appears on the terms of the contract. (*Southern Cal. Gas Co*. v. *ABC Construction Co*. (1962) 204 Cal.App.2d 747, 749, 750-752; *Ascherman* v. *General Reinsurance Corp*. (1986) 183 Cal.App.3d 307, 311.) It is well settled, however, that Civil Code section 1559 excludes enforcement of a contract by persons who are only incidentally or remotely benefited by it. (*Lucas* v. *Hamm* (1961) 56 Cal.2d 583, 590.) "A third party should not be permitted to enforce covenants made not for his benefit, but rather for others. He is not a contracting party; his right to performance is predicated on the contracting parties' intent to benefit him. [Citations.]" (*Murphy* v. *Allstate Ins. Co*. (1976) 17 Cal.3d 937, 944.)

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11 The complaining cities "agreed to associate together as the Association for the Mitigation of Transportation Impacts of Ports Expansion," for the "purpose of asserting the rights alleged" within the first amended complaint. Thus, our conclusion -- that the complaining cities are not third party beneficiaries to the JPA and thus have no standing to bring the lawsuit underlying this petition -- is equally applicable to the real party association.

The complaining cities make much of the fact that they are named in the JPA as members of the Board. Of course, "[t]he fact that the third party is only incidentally named in the contract or that the contract, if carried out [according] to its terms, would inure to the third party's benefit is insufficient to entitle him or her to demand enforcement. [Citation.] Whether a third party is an intended beneficiary or merely an incidental beneficiary to the contract involves construction of the parties' intent, gleaned from reading the contract as a whole in light of the circumstances under which it was entered. [Citation.]" (*Jones* v. *Aetna Casualty & Surety Co*. (1994) 26 Cal.App.4th 1717, 1724-1725.)

The language of the JPA is clear. The Cities of Long Beach and Los Angeles, "acting by and through their respective Board of Harbor Commissioners," entered into the JPA in order to develop "the street and railroad rights of way along Alameda Street between the Santa Monica Freeway and the San Pedro Bay ports." Their intent was to construct a "comprehensive transportation corridor and all related facilities linking the Port of Long Beach and the Port of Los Angeles to the central Los Angeles area, through an improved railroad and highway network." They wanted to develop such a network so that they could "more effectively operate their existing wharf and dock facilities for the promotion and accommodation of commerce, navigation and fishery."

The Cities of Long Beach and Los Angeles expressed their concern about "the movement of commerce and its impact on the communities," and their optimism that the new transportation system would reduce "vehicular traffic on existing freeway systems," and improve "air quality in the Southern California region."

The Cities of Long Beach and Los Angeles "recognize[d] that the cities contiguous to the [transportation corridor] and the railroads serving the Long Beach and Los Angeles area have certain concerns and interests in the [transportation corridor] which must be considered and addressed by" ACTA.

There is no question that the planned construction will adversely impact the complaining cities during the construction phase. It is also true, of course, that once in

place the improved transportation system will benefit not only the complaining cities, but the entire region. The fact that the Cities of Long Beach and Los Angeles recognized the obvious, i.e., that the cities contiguous to the Project would have certain concerns which would have to be addressed by the agency created by the JPA does not mean that the Cities of Long Beach and Los Angeles intended the complaining cities to be third party beneficiaries to the JPA.

Virtually any construction project which is undertaken by cities under a joint powers agreement will have some impact on neighboring cities. This is especially true where, as here, the project is of the magnitude described by the parties to this petition. Although it was prudent on the part of the Cities of Long Beach and Los Angeles to recognize the necessity of addressing the concerns of its neighboring cities, we conclude that the language of the JPA, and the circumstances under which the JPA was made indicates that the complaining cities are merely incidental beneficiaries, and thus not entitled to seek a declaration of rights under the agreement.

E. Taxpayer Standing

Petitioners contend that the complaining taxpayers, one a resident of the City of Long Beach, and the other a resident of the City of Vernon, are without legal capacity to sue. Reliance is placed on section 526a which provides that "[a]n action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein . . . who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. . . ."

Because the Long Beach taxpayer alleges that she is a "resident" of Long Beach (one of the parties to the JPA), and that she pays taxes in that city, the bare language of section 526a gives her standing to assert the illegality of the amendment.

In addition to a statutory cause of action pursuant to section 526a, a taxpayer is entitled to bring suit against a municipality under a common law theory alleging fraud, collusion, ultra vires, or a failure on the part of the municipality to perform a duty specifically enjoined. (*Los Altos Property Owners Assn.* v. *Hutcheon* (1977) 69 Cal.App.3d 22, 26.)[12]

"While the two theories are similar in many respects, they differ in two important areas. First, section 526a includes the waste of public property as a ground for bringing suit, while the common law limits the grounds to fraud, collusion, ultra vires, or a failure to perform a duty specifically enjoined. While waste may seem to be a form of ultra vires act, courts have distinguished between the two. [Citation.] Second, section 526a, on its face, only applies to towns, cities, counties, and cities and counties of the state, while the common law theory applies to all state and local governmental bodies." (*Los Altos Property Owners Assn.* v. *Hutcheon, supra,* 69 Cal.App.3d at p. 26.)

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[12] The second taxpayer is not a resident of either Long Beach or Los Angeles. Nor does he allege that he pays taxes in either of these cities. The plain language of section 526a, therefore, would appear to render him without standing to sue either the City of Long Beach or the City of Los Angeles. He claims, however, that he has standing under *Irwin* v. *City of Manhattan Beach* (1966) 65 Cal.2d 13 (*Irwin*), and the rule which states that section 526a is to be liberally construed so as to permit taxpayers to bring a suit to prevent the illegal conduct of city officials. (*Blair* v. *Pitchess* (1971) 5 Cal.3d 258, 268.) To hold otherwise, he concludes, would defeat the primary purpose of section 526a which is to '"enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement,"' (*Id.* at pp. 267-268.) *Irwin* is, of course, distinguishable. There, the taxpayer sued the City of Manhattan Beach alleging that she owned real property and paid taxes in the city. (*Id.* at p. 16.) The *Irwin* court concluded that non-residents who allege that they pay taxes levied against real property located in a defendant city have standing to pursue a section 526a claim. (*Id.* at pp. 19-20.) The non-resident taxpayer here does not allege that he pays taxes levied against property that he owns in either the City of Long Beach or the City of Los Angeles. We conclude therefore, that he is without legal capacity to maintain his section 526a claim. And, because his common law claim is identical to his section 526a claim, we also conclude that he lacks standing to assert his common law action.

The taxpayer here not only alleges an illegal expenditure of funds by the Cities of Long Beach and Los Angeles, she also claims that these cities, in amending the JPA to strip ACTA's governing Board of its authority of final approval over Project expenditures, failed to perform a duty specifically enjoined by the Act. We conclude, therefore, that the resident taxpayer has standing to maintain this lawsuit.[13]

F. Has the Resident Taxpayer Stated A Cause of Action?

The taxpayer contends she has stated a cause of action under section 526a because she alleges that the amendment to the JPA is a "violation of the [Act which] will result in the illegal expenditure, waste of, or injury to the funds, or other property of [the] defendant cities."[14]

The taxpayer's argument is structured as follows. Pursuant to section 6509 of the Act, ACTA is required to exercise the power granted to it in the JPA in a manner consistent with the rules specified in the agreement, i.e., the rules which govern the exercise of power by the City of Los Angeles. Because section 34 of the Los Angeles City Charter prohibits the Los Angeles City Council from delegating its spending power to a committee, ACTA is subject to the same type of restriction. Because the

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[13] A taxpayer may utilize section 526a to obtain declaratory relief. (*Van Atta* v. *Scott* (1980) 27 Cal.3d 424, 449-450.) Questions relating to the formation of a contract, its validity, its construction and effect are proper subjects for declaratory relief. (*Foster* v. *Masters Pontiac Co.* (1958) 158 Cal.App.2d 481, 486.) And, while a taxpayer is not entitled to a general declaration of the meaning of a statutory scheme (*Zetterberg* v. *State Dept. of Public Health* (1974) 43 Cal.App.3d 657, 662), the court may interpret any statute which may be involved. (*Andrews* v. *City of Piedmont* (1929) 100 Cal.App. 700, 701.)

[14] The taxpayer also contends that she has properly pled a common law action because she alleges that the entering into of certain contracts by the finance committee -- as reconstituted pursuant to the amendment -- constitutes ultra vires acts on the part of the Cities of Long Beach and Los Angeles, and that the Cities of Long Beach and Los Angeles had a duty to refrain from restructuring ACTA in an improper manner. The taxpayer's common law cause of action -- like her section 526a claim -- is based on her contention that the amendment to the JPA violates the Act and is, therefore, void.

amendment to the JPA calls for just this sort of delegation of power, the amendment violates the Act and thus is null and void.

Section 6509 provides that the power given to the separate agency by a joint powers agreement (ACTA in this case) "is subject to the restrictions upon the manner of exercising the power of one of the contracting parties, which party shall be designated by the agreement."

Prior to the enactment of section 6509 in 1949, it was difficult to determine -- because each of the agencies to a joint power agreement often had different limitations and restrictions upon the manner or mode of exercising the common power -- which of the several modes were to be followed. (Letter from the Office of the Los Angeles County Counsel to the Legislative Secretary, Office of the Governor (June 26, 1947) regarding proposed amend. to the Act.) Section 6509 was added to the Act to "make it clear that the agency designated to exercise the joint powers may be one of the parties to the agreement or may be a separate agency," and "to make it clear that the agency exercising the joint powers is subject to the limitations and the restrictions upon the manner or mode of exercising that power which is applicable to one of the contracting parties, which one would be designated in the agreement." (Letter from the Office of the Los Angeles County Counsel, *supra*, at p. 1.)

A simple application of section 6509 is found in *City of Inglewood-L.A. County Civic Center Auth.* v. *Superior Court* (1972) 7 Cal.3d 861. There, the joint powers agreement between the City of Inglewood and Los Angeles County provided that the powers of the joint public entity would be subject to the restrictions imposed upon the county in exercising its powers. (*Id.* at pp. 864-865, fn. 2.) Thus, the county's competitive bidding restrictions were imposed upon the joint powers agency. (*Id.* at p. 866.)

The application of section 6509 urged by the taxpayer is not so simple. The argument advanced suggests that section 6509 requires a literal application of all the provisions of the Los Angeles City Charter. As discussed below, such a construction is

absurd and must be rejected. The more interesting question is whether contracting parties to a joint powers agreement are required to pluck from city charter provisions general principles of law with respect to the city's restriction on its delegation of power and apply them to separate entities created by a joint powers agreement. Resolution of this issue requires an interpretation of section 6509, other provisions of the Act, and certain provisions of the Los Angeles City Charter.

In construing the words of a statute to discern its purpose, the provisions should be read together, an interpretation which would render terms surplusage should be avoided, and every word should be given some significance. (*City and County of San Francisco* v. *Farrell* (1982) 32 Cal.3d 47, 54.) Moreover, statutory language must be given such interpretation as will promote rather than defeat the general purpose and policy of the law. (*Harry Carian Sales* v. *Agricultural Labor Relations Bd.* (1985) 39 Cal.3d 209, 223; *Walker* v. *Superior Court* (1988) 47 Cal.3d 112, 124.) With these principles in mind, we examine the statutory provisions at issue here.

The Cities of Long Beach and Los Angeles agreed that ACTA would be subject to the limitations and restrictions applicable to the City of Los Angeles. Section 34 of the Los Angeles City Charter, enacted in 1925, provides as follows: "All the functions of the government of the City shall, by ordinance, be divided or grouped into divisions equal to the number of the members of the Council and each member of the Council shall be chairman of a committee consisting of three Councilmen for one of such divisions. It shall be the duty of each such committee to be fully informed of the business of the City included within the division to which it is assigned, and to report to the Council such information or recommendations concerning the business of such divisions as shall be necessary to enable the Council properly to legislate for such division. Each Council committee shall, as such committee, have no administrative control over the various functions of the City government embraced within the division to which it is assigned, but shall perform the duties of investigation for and recommendation to the Council in its work of legislation; and the administration of all

the branches of the City government embraced within the said subdivisions shall continue to be vested in the officials duly elected or appointed in accordance with the provisions of this Charter. Said committees, and the chairmen thereof, shall be appointed by the President of the Council."

Section 34 of the Los Angeles City Charter is one of the many sections of the 700-page charter which directs the structure of Los Angeles city government. It does nothing more than establish certain advisory committees made up entirely of city council members -- committees which are formed to advise the council. It is consistent with the general law which prohibits a municipality from delegating legislative powers unless expressly authorized by the Legislature (see*Birkenfeld* v. *City of Berkeley* (1976) 17 Cal.3d 129, 167), and from contracting away, or otherwise delegating its police powers. (*City and County of San Francisco* v. *Cooper* (1975) 13 Cal.3d 898, 929.) It is also consistent with case law which provides that when the Legislature has delegated the power to levy taxes to a certain body, that body cannot delegate such power to another body or other officers. (*Myers* v. *City Council of Pismo Beach* (1966) 241 Cal.App.2d 237, 239-241.)

The Legislature has specifically authorized municipal corporations such as the Cities of Long Beach and Los Angeles to delegate, to a separate entity created pursuant to a joint powers agreement, the power to perform a specific task which each of the contracting parties, separately, have the power to perform. (§6500 et seq.) The separate entity -- once created -- may not delegate the power given to it under the joint powers agreement to a second separate entity. (See 71 Ops.Cal.Atty.Gen. 266, 275 (1988) [holding "[i]nasmuch as a school district may not delegate to a private person or entity the ultimate responsibility to contract on its behalf, two or more of them may not establish a JPA to delegate to a private person such authority."].) The amendment, however, does not delegate ACTA's power to construct the Project to a second separate entity. The amendment simply structures ACTA, the joint powers authority created by the JPA, in a manner which gives more control over the expenditure of certain funds to

a finance committee made up of certain members of the Board. Nothing contained within section 34 of the Los Angeles City Charter or the general law pertaining to the delegation of powers by a municipal corporation specifically prohibits the contracting parties to a joint powers agreement from structuring their joint powers authority in this fashion.

The County of Los Angeles (amicus curiae), makes an argument similar to that made by the taxpayer, i.e., that because the JPA states that the Cities of Long Beach and Los Angeles entered into the JPA, "acting by and through their respective Board of Harbor Commissioners," pursuant to section 6509, any restrictions on the exercise of power by the Board of Harbor Commissioners of the City of Los Angeles found in the Los Angeles City Charter should be applicable to ACTA. The county notes that the powers and duties of the Board of Harbor Commissioners of the City of Los Angeles are found in section 139 of the Los Angeles City Charter. Subdivision (h) of that section allows the board to make and enforce "rules and regulations of general application," and fix, regulate and collect "rates, tolls, and charges." These powers, however, are contingent upon the city council's approval. Likewise, the Board of Harbor Commissioners' power to franchise, permit and/or lease is subject to council approval under certain circumstances (§ 140), as is its power to contract (§ 143), and issue and sell bonds (§ 146). As we understand the argument advanced by the county, ACTA must be considered to be the equivalent of the Board of Harbor Commissioners of the City of Los Angeles, and ACTA's governing board to be the equivalent of the Los Angeles City Council. Because the Board of Harbor Commissioners of the City of Los Angeles is not allowed to exercise certain powers without the approval of the city council, ACTA should not be allowed to exercise its powers without the approval of the Board. As with section 34, nothing contained within those sections of the city charter pertaining to the Board of Harbor Commissioners of the City of Los Angeles sets forth any restrictions on the manner in which the parties to a joint powers agreement are allowed to structure the separate entity created by a joint powers agreement.

Taken to its logical end, the argument advanced by the county and the taxpayer -- that ACTA is to be considered the equivalent of the City of Los Angeles, ACTA's governing board the equivalent of the Los Angeles City Council, and the finance committee created by the JPA the equivalent of a committee created by the City Council -- means that ACTA can be nothing short of a mirror-image of Los Angeles city government itself. This would mean that ACTA would be required to have a mayor, a city attorney, a controller, a city engineer, a city administrative officer, a purchasing agent and a treasurer. ACTA's governing board would have to be elected by districts from 15 separate areas of Los Angeles; and the board would be required to establish 15 committees consisting of 3 members each. We are prohibited from interpreting either section 6509 or the Los Angeles City Charter in such an absurd manner. (See *Central Pathology Service Medical Clinic, Inc*. v. *Superior Court* (1992) 3 Cal.4th 181, 191.)

The parties have not provided, nor have we discovered, authority which specifically addresses the issue of how a separate entity created by a joint powers agreement is required to be structured. The statutory scheme set forth in the Act suggests, however, that while the separate entity may administer the JPA through a governing board, the separate entity is not prohibited from giving control over the expenditure of funds to a committee -- as long as the governing board has ultimate control over the overall budget.

Pursuant to the JPA, ACTA possesses the common power specified in the agreement, i.e., the power to build the transportation corridor. In other words, it has the power to acquire, construct, reconstruct, rehabilitate, maintain, lease or sell land, facilities and appurtenances necessary or convenient for the development and operation of the corridor. In addition, it has the power to acquire land, facilities or appurtenances by lease, contract, or purchase, and the authority to dispose of land. ACTA also has the power to incur debts, liabilities or obligations, and to sue and be sued in its own name.

Finally, ACTA has the power to operate or cause to be operated facilities acquired or constructed by ACTA.

The original JPA created a governing board made up of 14board members. The Board was required to approve the expenditure of all funds in order to accomplish the goal set forth within the JPA. Under the amended JPA, ACTA's Board no longer has authority over the expenditures of the "port funds." The authority has now been delegated to a finance committee which is required to "review and approve, by a majority vote for and on behalf of the Governing Board, (i) all matters involving the expenditure of funds provided by the Ports and funds from proceeds of bond issues or other forms of indebtedness incurred or guaranteed by the Ports; (ii) all matters involving the borrowing of money or issuance of debt; (iii) all matters involving the setting of any charges or rates for the use of the Alameda Corridor or any facilities related thereto; and (iv) all matters involving the award of contracts to be funded in whole or in part by funds provided by the Ports or funds from proceeds of bond issues or other forms of debt incurred or guaranteed by the Ports for work on or related to the construction, development and operation of the Alameda Corridor. The Governing Board shall not be required to consider, approve or vote on any matter set forth above as items (i) through (iv)."

Section 6508 provides that "[t]he governing body [created by the joint powers agreement] shall be empowered to delegate its functions to an advisory body or administrative entity for the purposes of program development, policy formulation, or program implementation, provided, however, that*any annual budget of the agency* to which the delegation is made must be approved by the governing body of the Joint Powers Agency." (Emphasis added.)

According to the county, "the clear intent of [s]ection 6508 is to<u>reserve</u> fiscal control and oversight of the joint powers authority in the governing body." (Original emphasis.) The county concludes that the amendment "does not meet the statutory

standard because it delegates fiscal control to an advisory body, the finance committee, and prohibits the governing board from overseeing that body." We disagree.

Section 6508 allows the governing board to delegate "program implementation" to a committee. The word "implement" is defined to mean "carry out, accomplish," or "to give practical effect to and ensure of actual fulfillment by concrete measures." (Webster's New Collegiate Dict. (10th ed. 1995) p. 583.) The amendment requires the finance committee to accomplish the goals of ACTA and the Board by, among other things, approving the expenditure of port funds. The amendment does not prohibit the Board from approving ACTA's annual budget. This being so, we conclude that it does not violate the express requirements of section 6508.

Our conclusion that the amendment is valid is bolstered by our observation that under the Act, the Cities of Long Beach and Los Angeles were allowed in the first instance to establish ACTA and the finance committee as eventually accomplished in the amendment. Section 6502 provides for the legislative formation of a joint power agency for the purpose of exercising joint powers. Section 6503 empowers the parties to the agreement to provide for the manner in which the power will be exercised. Section 6504 contemplates the spending of public funds by whatever entity is created. Finally, section 6506 provides that the parties to the agreement may design their joint power agency in almost any manner they wish, including designating one of the contracting parties as the agency.

As the foregoing provisions demonstrate, the Act gives contracting parties broad discretion in designing their joint power agency. For example, the original composition of ACTA could have been nothing more than the finance committee as reconstituted under the amendment. Or, it could have been the City of Los Angeles. Or, any combination of the various parties to this lawsuit. The Act simply does not prohibit parties to a joint powers agreement from amending the agreement to redesign the separate entity created by the agreement. In fact, the Act anticipates amendments to joint power agreements. (See § 6503.5 ["effective date of the agreement or

amendment"].) Nothing contained within the Act implies that once an agency and method of executing powers are established, immutable rights are also created.

The Cities of Long Beach and Los Angeles executed a joint powers agreement (with a rules designation), and ACTA was created. Thereafter, the cities amended the terms of the agreement. They were allowed to do this without following the "rules" designated in the agreement. They changed the structure of the separate entity (ACTA). In so doing, they expanded the number of members on the Board, and changed the procedure for implementing the project. In other words, they put the power to spend certain monies under the direct control of the entities providing those monies. Nothing contained within the Act or the Los Angeles City Charter prohibits the Cities of Long Beach and Los Angeles from so doing.

What the Act permits is the creation of a joint powers agreement to accomplish a single goal -- in this case the development of a comprehensive rail system. The absence of any specific restrictions with respect to the way in which a separate entity such as ACTA may be structured reflects the Legislature's intent to allow the contracting parties some freedom in deciding the best way in which to accomplish the goal set forth in their joint powers agreement. Had the Legislature intended the restrictions proposed by the taxpayer and the county, it would have made the Act more specific.

IV. CONCLUSION

We have concluded that the complaining cities are not third party beneficiaries under the JPA and thus have no standing, that the non-resident taxpayer is not entitled to assert either a section 526a or common law claim, and that because the resident taxpayer's declaratory relief action is based on the contention that the amendment to the JPA is an improper delegation of power, the taxpayer has failed to state a cause of action under either section 526a or the common law. For these reasons, we conclude that petitioners' demurrers should have been sustained without leave to amend.

V. DISPOSITION

Let a writ issue directing the superior court to vacate its orders overruling petitioners' demurrers to real parties' first amended complaint, and to enter a new and different order sustaining the demurrers without leave to amend. The temporary stay is vacated, and the order to show cause is discharged. The parties are to bear their own costs.

CERTIFIED FOR PUBLICATION

FUKUTO, Acting P.J.

We concur:

NOTT, J.

ZEBROWSKI, J.